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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 30 2002

FCC MAIL ROOM

In the Matter of)
)
Review of Commission's Rules and) MM Docket No. 00-39/
Policies Affecting the Conversion) FCC 01-330
to Digital Television)

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

1. This opposition is addressed to a petition for reconsideration dated January 17, 2002 filed by Diversified Broadcasting, Inc. ("Diversified"). Community Television of Florida, Inc., successor in interest to Community Television, Inc. ("Community Television"), is the surviving applicant for construction permit for analog station on reserved channel 16 at Marianna, Florida, referred to at ¶1 of the petition.

2. Diversified, whose analog facility on channel 20 at Gainesville, Florida, was matched 100% by a paired digital allotment on channel 16 (extract from table to the Sixth Report and Order attached as Exhibit A), seeks an enlargement of its digital facility under an "expansion application". The enlargement is quite substantial (statement of Kevin T. Fisher attached as Exhibit B).

3. According to the subject petition at ¶9, n. 6, 70% of the expansion would have to be foregone in order to protect Community Television's proposed Marianna facility, which long ago was accepted for filing and cutoff, and for which there no longer is any competing application. Stated another way, while

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Diversified can achieve 30% of its expansion over and above the fully-matched pairing, it wants the additional 70% of its expansion at the expense of the Marianna facility. The interference to the latter is not insubstantial; it would occur in populated areas in and near Tallahassee, Florida (Exhibit B).

4. Diversified takes the position that under the Commission's report and order in the referenced docket issued in January 2001, its expansion application would have been mutually exclusive with Community Television's new-station application. Maybe so, maybe not. After that agency action, the Commission's staff in February 2001 issued a letter calling for a showing that protection would be provided to the Marianna application (Exhibit C) and even though Diversified cited the report and order in its response (Exhibit D), the Commission recently again renewed its call for such a showing (Exhibit E).

5. Be that as it may, the passage in the January 2001 report and order relied on by Diversified was reversed in the subject memorandum opinion and order on reconsideration issued in November 2001. Until and unless this is overturned, the expansion application stands in violation of the Commission's rules and policies and is subject to dismissal. We reserve the right to file a further responsive pleading, within the time period allowed under the Commission's rules for notice and comment rulemaking proceedings, 47 C.F.R. §1.4(b)(1) and §1.429(f), addressed to this argument.

6. However, even if Diversified were to be successful in persuading the Commission to alter its stance in the matter of mutual exclusivity between the outter portions of the Gainesville digital expansion and the Marianna new-station application, the appropriate remedy, absent a negotiated resolution of the conflict by the parties, would be for dismissal of the expansion application. If the mutual exclusivity were between two digital expansion applications, both would be dismissed in the event of failure to resolve their differences. Surely, Commission policy and Section 307(b) of the Act would not require dismissal of an application for a new television station to activate a reserved channel because it would not concede to the interests of a commercial station whose digital station is fully paired and eligible for 30% of an expansion beyond that, but wants even more.

7. These facts and circumstances are highly limited and probably should not materially influence the Commission's judgments in the captioned proceeding regarding policies and procedures to deal with the complex regulatory program to continue the transition to digital broadcasting. If all else fails, the Commission can address this specific situation by an old fashioned 307(b) choice, pitting the new analog service, with ultimate availability of a paired digital channel of its own, vs. the additional gains in digital service by the Gainesville station.

8. With the request that the Commission's staff and counsel make a note of my new address shown below, this pleading is

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Gene A. Bechtel', written over a horizontal line.

Gene A. Bechtel

Law Office of Gene Bechtel, P.C.
1050 17th Street, N.W., Suite 600
Washington, D.C. 20036
Telephone 202-496-1289
Telecopier 301-762-0156

Counsel for Community Television
of Florida, Inc.

January 29, 2002

EXHIBIT A

STATE AND CITY	NTSC CHAN	DTV CHAN	DTV POWER (kW)	ANTENNA HAAT (m)	DIGITAL TELEVISION SERVICE		EXISTING NTSC		NEW INTERFERENCE		DTV/ NTSC AREA MATCH (%)
					DURING TRANSITION		CURRENT SERVICE				
					AREA (Sq km)	PEOPLE (thous)	AREA (Sq km)	PEOPLE (thous)	AREA (% NL Area)	PEOPLE (% NL Pop)	
CT NEW HAVEN	8	10	8.2	363.0	23358	5735	23110	4690	4.0	2.6	91.5
CT NEW HAVEN	59	6	1.0	314.0	17262	4343	18677	4424	2.5	1.0	88.1
CT NEW HAVEN	65	39	50.0	82.0	1425	546	1369	530	0.0	0.0	100.0
CT NEW LONDON	26	34	111.7	381.0	18113	2923	15223	1723	0.7	1.8	99.9
CT NORWICH	53	45	50.0	207.0	10135	1016	9558	838	3.2	4.6	98.6
CT WATERBURY	20	12	3.2	366.0	19515	4654	18653	4039	8.5	4.7	94.1
DC WASHINGTON	4	48	1000.0	237.0	27422	6562	24749	6454	7.0	3.3	98.9
DC WASHINGTON	5	6	6.6	235.0	22879	6343	26711	6533	0.0	0.0	82.9
DC WASHINGTON	7	19	1000.0	235.0	24391	6346	23215	6365	0.0	0.0	99.0
DC WASHINGTON	9	34	1000.0	235.0	24684	6438	22883	6299	0.0	0.0	100.0
DC WASHINGTON	20	35	221.7	235.0	17611	6043	17179	5746	0.2	0.0	97.0
DC WASHINGTON	26	27	64.3	233.0	15402	5868	15606	5637	14.5	4.4	96.9
DC WASHINGTON	32	33	186.0	213.0	14526	5769	14310	5777	10.2	2.4	97.7
DC WASHINGTON	50	51	62.2	247.0	15011	5859	14207	5376	0.1	0.0	99.8
DE SEAFORD	64	44	50.0	195.0	4202	154	4202	154	3.4	2.9	100.0
DE WILMINGTON	12	55	1000.0	294.0	23834	7726	20132	6742	0.0	0.0	99.7
DE WILMINGTON	61	31	50.0	292.0	16707	5587	15401	5324	5.4	6.5	98.6
FL BOCA RATON	63	44	59.1	310.0	13892	3705	13892	3705	0.0	0.0	100.0
FL BRADENTON	66	42	50.0	465.0	18294	2380	18282	2379	0.0	0.0	100.0
FL CAPE CORAL	36	35	206.9	450.0	24085	879	23907	870	0.0	0.0	99.9
FL CLEARWATER	22	21	222.4	433.0	21082	2536	21082	2536	7.7	4.5	100.0
FL CLERMONT	18	17	230.3	458.0	28579	2143	28566	2101	0.0	0.0	99.4
FL COCOA	52	51	148.1	285.0	14222	1508	14142	1510	0.0	0.0	99.7
FL COCOA	68	30	50.0	287.0	13459	1043	13446	1039	0.0	0.0	100.0
FL DAYTONA BEACH	2	11	45.1	503.0	44808	2703	41617	2380	0.0	0.0	100.0
FL DAYTONA BEACH	26	49	139.5	304.0	16535	1271	13794	830	0.0	0.0	100.0
FL FORT LAUDERDALE	51	52	145.2	262.0	13418	3627	13422	3627	0.0	0.0	100.0
FL FORT MYERS	11	53	1000.0	451.0	36995	1146	34767	1033	7.6	5.4	100.0
FL FORT MYERS	20	15	206.2	451.0	24348	847	24348	847	0.8	0.0	100.0
FL FORT MYERS	30	31	50.0	293.0	16321	651	16188	651	6.8	4.6	100.0
FL FORT PIERCE	21	38	112.7	147.0	11558	446	11088	436	0.0	0.0	100.0
FL FORT PIERCE	34	50	288.7	454.0	24332	1376	23318	1068	0.0	0.0	100.0
FL FORT WALTON BEA	35	25	50.0	60.0	4682	155	4678	155	4.7	1.0	100.0
FL FORT WALTON BEA	53	40	53.8	219.0	12570	488	12574	488	0.0	0.0	100.0
FL FORT WALTON BEA	58	49	50.0	59.0	1170	106	1170	106	0.0	0.0	100.0
FL GAINESVILLE	5	36	1000.0	262.0	31857	1207	31333	1154	0.0	0.0	100.0
FL GAINESVILLE	20	16	87.1	287.0	16217	546	16213	547	0.3	0.1	100.0
FL HIGH SPRINGS	53	28	99.4	278.0	13464	443	13293	416	0.0	0.0	99.9
FL HOLLYWOOD	69	47	93.2	264.0	13802	3583	13806	3583	0.0	0.0	100.0
FL JACKSONVILLE	4	42	1000.0	293.0	33348	1219	31979	1179	0.0	0.0	100.0
FL JACKSONVILLE	7	38	959.1	277.0	27783	1087	26499	1082	4.0	1.9	100.0
FL JACKSONVILLE	12	13	13.9	296.0	28267	1092	27930	1091	3.8	2.1	99.9
FL JACKSONVILLE	17	34	287.8	304.0	21158	1047	20982	1045	6.4	1.9	100.0

EXHIBIT B

SMITH AND FISHER

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of COMMUNITY TELEVISION OF FLORIDA, INC. ("CTFI"), applicant for a new noncommercial NTSC television station on Channel 16 in Marianna, Florida (BPET-19960724KO), in support of this opposition to the Petition for Reconsideration of the FCC's dismissal of the maximization application filed by the licensee of WCJB-DT, Channel 16 in Gainesville, Florida. The Commission dismissed the WCJB-DT application (BPCDT-19991101AGS) due to a violation of the FCC's interference rules with regard to the Marianna proposal.

The predicted 41 dBu service contours of WCJB-DT, as allotted and as proposed in the maximization application are plotted in Figure 1. As shown, the coverage area of the maximized facility is significantly greater than that afforded to the station by the FCC in its allotment scheme, which sought to replicate the coverage of the underlying analog facility (WCJB-TV).

We then conducted a detailed interference study using the Longley-Rice methodology contained in the Commission's *OET Bulletin No. 69*, with respect to interference from proposed WCJB-DT to the Marianna facility. The software utilizes a 1-square kilometer cell size, calculates signal strength at 0.1 kilometer increments along each radial studied, and employs the 2000 U.S. Census to count population within cells. In addition, the program does not attribute interference to proposed WCJB-DT in cells within the Marianna station's protected contour where interference from another source (other than proposed WCJB-DT) already is predicted to exist (also known as "masking"). The study concludes that maximized WCJB-DT facility causes interference to 6.1 percent of the service

January 29, 2002

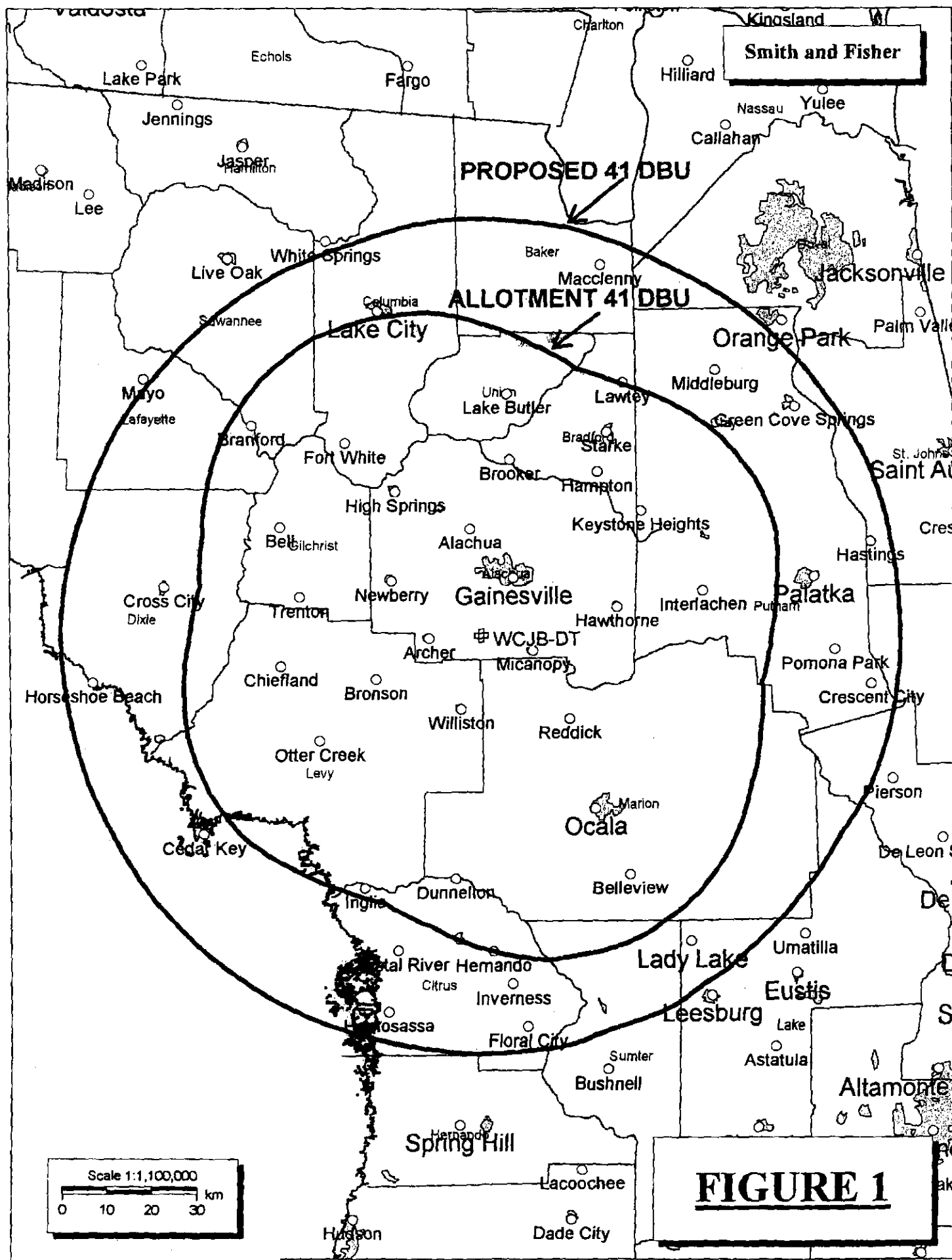


EXHIBIT C



Federal Communications Commission
Washington, D.C. 20554

30608-03

Due Monday
1998

FEB 15 2001

1800E1-KRH

Diversified Broadcasting, Inc.
6220 NW 43rd Street
Gainesville, FL 32653

In Re: BPCDT-19991101AGS
WCJB-DT
Fac Id: 16993
Gainesville, FL

Dear Applicant:

This is in reference to the above-captioned application for a construction permit for a new digital television (DTV) station on channel 16 at Gainesville, FL.

We have completed our technical review of your application and conclude that the application cannot be granted because it would cause interference to an authorized broadcast facility. See *FCC Public Notice, Additional Application Processing Guidelines for Digital Television (DTV)*, released August 10, 1998. Specifically, a grant of your proposal would cause a reduction in the population that would receive NTSC service within the service area of a new television station on channel 16, located in Marianna, FL, proposed in BPET-19960724KO, by 7.8 percent utilizing a 2 km cell. This is co-channel to your proposed DTV operation.

Accordingly, you must within 30 days of the date of this letter, amend your application so that it will meet with the criteria specified in Section 73.623(c)(2) of the Commission's Rules. It is recommended that at this point in time you conduct a complete technical analysis of your proposal in an effort to correct the deficiency outlined in this letter as well as any other technical problems that might exist. You are cautioned that your failure to comply with the requirements of this letter within the time specified herein may result in the dismissal of your application pursuant to Section 73.3568(a) of the Commission's Rules.

Sincerely,

Clay Pendarvis
Chief, Television Branch
Video Services Division
Mass Media Bureau

cc: Elizabeth S. Houlton

EXHIBIT D

IRWIN, CAMPBELL & TANNENWALD, P.C.

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March 16, 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Attention: Kevin R. Harding
Stop Code 1800E1

Re: Station WCJB-DT, Facility ID 16993
Gainesville, Florida
BPCDT-19991101AGS

Dear Ms. Salas:

On February 15, 2001, the Commission sent a letter to my client, Diversified Broadcasting, Inc. ("Diversified"), directing it to amend its above-referenced application, which is to maximize its digital facilities on channel 16 at Gainesville, Florida. The Commission's letter noted that the amendment was necessary because the digital facilities proposed by Diversified would interfere with the NTSC service proposed by Community Television, Inc. ("CTI"), which is the applicant for a new analog television station on NTSC channel 16 at Marianna, Florida. File No. BPET-19960724KO. For the reasons set forth below, we submit that Diversified is not required to amend its application.

The CTI NTSC application has not been accepted for filing by the Commission.¹ Therefore, Diversified's digital expansion application is entitled to priority over the CTI NTSC application. See, *Report and Order and Further Notice of Proposed Rule Making on the Conversion to Digital Television in MM Docket No. 00-39*, released January 19, 2001.

[W]e give priority to DTV expansion applications over all NTSC applications except NTSC applications that fall into one of the following three categories...[which are not

¹ CTI's NTSC application is listed as "tendered for filing" in the Commission's CDBS database. See, the attached computer printout from CDBS.

Magalie Roman Salas, Secretary

March 16, 2001

Page 2

relevant here]...These NTSC applications must have been *accepted for filing* in order to be protected from DTV expansion applications...[W]e will require NTSC applications to protect facilities proposed by DTV applicants even if the DTV application was filed while the NTSC application is pending.

Id., at Par. 52 (*emphasis added*).

The situation with respect to Diversified's DTV expansion application versus CTI's NTSC application for channel 16 at Marianna is covered by the Commission in the quoted material. The CTI application has not been accepted for filing. Therefore, it is not protected from interference from the WCJB-DT expansion application.

Therefore, we respectfully request that the Commission rescind or withdraw its February 15 letter, and proceed with the processing of the WCJB-DT application.

Very truly yours,
Diversified Broadcasting, Inc.

By: 

Alan C. Campbell
Nathaniel J. Hardy

Its Attorneys

cc

Mr. Clay Pendarvis
Mr. Kevin R. Harding
Mr. John H. Morgan

EXHIBIT E



Federal Communications Commission
Washington, D.C. 20554

January 17, 2002

1800E1-KRH

Diversified Broadcasting, Inc.
6220 NW 43rd Street
Gainesville, FL 32653

In Re: BPCDT-19991101AGS
WCJB-DT
Fac Id: 16993
Gainesville, FL

Dear Applicant:

This is in reference to the above-captioned application for a construction permit for a new digital television (DTV) station on channel 16 at Gainesville, FL.

We have completed our technical review of your application and conclude that the application cannot be granted because it would cause interference to an authorized broadcast facility. *See FCC Public Notice, Additional Application Processing Guidelines for Digital Television (DTV), released August 10, 1998.* Specifically, a grant of your proposal would cause a reduction in the population that would receive NTSC service within the service area of a new television station on channel 16, located in Marianna, FL, proposed in BPET-19960724KO, by 9.1 percent utilizing a 2 km cell. This is co-channel to your proposed DTV operation.

Accordingly, you must within 30 days of the date of this letter, amend your application so that it will meet with the criteria specified in Section 73.623(c)(2) of the Commission's Rules. It is recommended that at this point in time you conduct a complete technical analysis of your proposal in an effort to correct the deficiency outlined in this letter as well as any other technical problems that might exist. We do not anticipate any further extensions of time in this matter since this is our second notice to you regarding this problem. Thus, you are cautioned that your failure to comply with the requirements of this letter within the time specified herein will result in the dismissal of your application pursuant to Section 73.3568(a) of the Commission's Rules.

Sincerely,

A handwritten signature in dark ink, appearing to read "Clay Pendarvis", written over a horizontal line.

Clay Pendarvis
Chief, Television Branch
Video Services Division
Mass Media Bureau

cc: Nathaniel J. Hardy

CERTIFICATE OF SERVICE

I certify that on this 29th day of January, 2002, I have caused copies of the foregoing OPPOSITION TO PETITION FOR RECONSIDERATION to be placed in the United States mails, postage prepaid, addressed to the following:

Alan C. Campbell, Esq.
Jason S. Roberts, Esq.
Irwin, Campbell & Tannenwald, P.C.
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1730 Rhode Island Avenue, N.W.
Washington, D.C. 20036
Counsel for Diversified Broadcasting, Inc.

Robert L. Olender, Esq.
Koerner & Olender, P.C.
Suite 124
5809 Nicholson Lane
North Bethesda, Maryland 20852
Counsel for Word of God



Gene A. Bechtel